

**ISSUE DATE: January 16, 2001**

**DOCKET NO. E-002/C-00-1563**

**ORDER OPENING FORMAL INVESTIGATION AND SETTING COMMENT AND  
REPLY PERIODS**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayer**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

**In the Matter of the Complaint of Ila  
Whittaker, Priscilla Harris and Community  
Action of Suburban Hennepin County  
Against Northern States Power Regarding  
Responsibility for Shared Meter Charges**

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**PROCEDURAL HISTORY**

**On May 10, 2000, Ila Whittaker (Whittaker), Priscilla Harris (Harris), each with the Community Action of Suburban Hennepin County (CASH), (collectively Complainants) filed a complaint and request for a contested case proceeding for relief from paying for certain Northern States Power (NSP) electric services because of shared-meter situations.**

**On May 24, 2000, the Commission's Consumer Affairs Office (CAO) closed its file on the matter and referred the complaints to the Office of the Attorney General, Residential Utilities Division ( OAG-RUD), due to the shared meter issues. The OAG-RUD indicated its willingness to mediate the complaints but declined to open a full investigation on the issues raised.**

**On June 5, 2000, the Complainants petitioned the Commission for reconsideration.**

**On June 22, 2000, the CAO dismissed the complaints because they did not represent the interests of at least 50 NSP customers as required by Minn. Stat. § 216B.17 subd. 1.**

**On July 24, 2000, the Complainants filed with the Minnesota Court of Appeals for review of the Commission's decision to dismiss the complaints.**

**On October 5, 2000, Complainants' reply brief was filed with the Court of Appeals requesting that the Court reverse the Commission's dismissal of the complaints and remand the matter to the Commission for initiation of a contested case proceeding or other proceeding leading to formal determination.**

**On November 21, 2000, a Stipulation for Dismissal of Appeal was filed with the Court of Appeals by Complainants, NSP (n/k/a Xcel Energy) and the Minnesota Public Utilities Commission (MPUC).**

**This matter came before the Commission on December 21, 2000.**

## **FINDINGS AND CONCLUSIONS**

### **I. Introduction**

**The Complainants have raised several issues in their complaints to the Commission. The only issue being addressed in this Order is whether the Commission should proceed with an investigation into the allegations made in the complaints. Determinations on the Commission's jurisdiction and on issues directly related to the merits of the case are not part of this Order.**

### **II. Background**

#### **A. Summary of the Complaint of Priscilla Harris**

**Priscilla Harris lived in a triplex located at 1200 Logan Avenue North, #2, Minneapolis from May 20, 1993 to October 31, 1996. The building consisted of one upper level unit, one ground level unit and a small basement apartment. There were two electric meters to measure service. The lease provided that Ms. Harris was responsible for paying the electric bills for her unit, the upstairs residence.**

**On September 17, 1996, an NSP technician inspected the electrical lines at 1200 Logan Avenue, and discovered that the meter measuring electric consumption to Harris' unit also measured electric service to another unit. Harris vacated the property at the end of October 1996. She now lives on Humboldt Avenue in Minneapolis.**

**During the course of her three year tenancy, Harris paid approximately \$2,000 in total electric bills. When she vacated the Logan Avenue residence, Harris had about a \$1,700 balance due to NSP, representing unpaid electric charges during her Logan Avenue tenancy.**

**NSP has given notice of its intent to terminate Harris' electric service at her new Humboldt Avenue residence unless she pays or makes arrangements to pay the \$1,700 in arrears from her Logan Avenue tenancy.**

**Harris asks the Commission to Order NSP to refund the approximately \$2,000 she paid for service during her three year tenancy prior to the discovery of the shared meter. Further, Harris wants the Commission to order NSP to release her from liability for the \$1,700 in**

arrears.

#### **B. Summary of Complaint of Ila Whittaker**

Ila Whittaker resided in a six-unit apartment building at 402 W. Broadway, #5 in Minneapolis from March 1, 1999 to September 10, 1999. The lease for the unit provided that Whittaker would pay for electricity for her unit, one of two upstairs units. There were six meters measuring electricity at this property. During the course of her tenancy Whittaker paid approximately \$70 to NSP for electric charges.

On September 8, 1999, an NSP technician inspected the lines at Whittaker's address and discovered that the meter measuring electric consumption in Whittaker's unit also measured electrical consumption by a hot water heater providing hot water to a part of a neighboring unit. Whittaker has a balance due to NSP of \$309.54 for electrical service at the W. Broadway building during the course of her tenancy. Whittaker moved to Brooklyn Park on September 10th.

NSP has given notice of its intention to terminate Whittaker's current electric service at her Brooklyn Park residence if she does not pay or make arrangements to pay the \$309.54 in arrears.

Whittaker seeks a refund of all monies she has paid to NSP and a release from liability for the \$309.54 arrears.

#### **C. Community Action of Suburban Hennepin County**

Community Action of Suburban Hennepin County (CASH) is a joint complainant in each of the above complaints. CASH administers a federally-funded program providing cash grants and assistance to income-eligible individuals who are unable to pay their utility bill. CASH assumes that grant money from CASH has been awarded to tenants who have applied all or parts of such grants in situations similar to that of Whittaker and Harris.

#### **D. Legal Theories of Complainants**

The complaints set forth several statutes encompassing several areas of law including landlord tenant,<sup>1</sup> contract,<sup>2</sup> and consumer protection<sup>3</sup> as a basis for relief. Further, the Complainants allege that the actions by NSP are a violation of certain provisions of the Public Utilities Act<sup>4</sup> and Minnesota Rules on Disconnection of Service and the Landlord-

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<sup>1</sup> Minn. Stat. § 504B.215.

<sup>2</sup> Minn. Stat. § 336.2-302.

<sup>3</sup> Minn. Stat. § 325F.69.

<sup>4</sup> Minn. Stat. §§ 216B.03, 216B.04, and 216B.07.

Tenant Rule.<sup>5</sup> Further, in support of their position complainants allege a violation of a Minneapolis City Ordinance.<sup>6</sup>

### **III. NSP's Position**

The Commission did not solicit comments from parties on these complaints and no comments were received. At the December 21, 2000 Commission meeting NSP stated that NSP takes the position that until there is a customer complaint to NSP and NSP has had an opportunity to investigate, the customer remains liable for service up to the date of discovery.

### **IV. The Stipulation for Dismissal of Appeal**

Following the appeal by the Complainants to the Minnesota Court of Appeals for review of the Commission's decision to dismiss the complaints, Complainants, the Commission and NSP (n/k/a Xcel) entered into a Stipulation for Dismissal of Appeal which provided that within

90 days of the filing of the Stipulation, the Commission would make a formal determination of whether the complaints raise matters of public interest, pursuant to Minn. Stat. § 216B.17 Subd.1, sufficient to require Commission investigation into the merits of the complaint. If the Commission determined that the complaints did not raise matters of public interest sufficient to warrant Commission consideration, the Commission would make a formal determination as to whether the complaints fall within the Commissions jurisdiction over rates as defined in Minn. Stat. § 216B.02 Subd.5.

### **V. Relevant Law**

The Complainants allege that the issues raised are in the public interest and should be heard by the Commission. The applicable statute, Minn. Stat. § 216B.17, Complaint Investigation and Hearing, states in part:

**Subdivision 1. Investigation.** On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, by the department, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the production, transmission, delivery or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient or unjustly

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<sup>5</sup> Minn. Rules 7820.1000, 7820.1300D, and 7820.1400B.

<sup>6</sup> Mpls. Code of Ord. § 244.270.

discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

#### **VI. Commission Action**

The Commission finds that the allegations raised in the complaints raise serious public interest issues and merit further investigation. The Commission will therefore open a formal investigation directing interested parties to comment on the issues raised in the complaints, including the issue of Commission jurisdiction, and on the issues set forth in Attachment A to this Order. The Commission will allow 30 days from the date of this Order for comments with a 20 day reply period following.

#### **ORDER**

1. Interested parties shall have 30 days from the date of this Order to file comments on the issues raised in the complaints and the issues listed in Attachment A to this Order. Interested parties shall have 20 days following the comment period to reply.
2. The Commission hereby delegates to the Executive Secretary authority to vary the time frames set forth herein.
3. This Order shall become effective immediately.

**BY ORDER OF THE COMMISSION**

**Burl W. Haar**  
Executive Secretary

**(S E A L)**

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service).

## ATTACHMENT A

1. Is Ila Whittaker responsible for electric usage not separately and accurately metered as required by Minn. Stat. § 504B.215?
2. Is Ila Whittaker responsible for electric usage not separately and accurately metered as required by Minneapolis Code of Ordinance 244.270?
3. Is Ila Whittaker responsible for electric usage not separately and accurately metered according to common law?
4. Is Priscilla Harris responsible for electric usage not separately and accurately metered as required by Minn. Stat. § 504B.215?
5. Is Priscilla Harris responsible for electric usage not separately and accurately metered as required by Minneapolis Code of Ordinance 244.270?
6. Is Priscilla Harris responsible for electric usage not separately and accurately metered according to common law?
7. Should the Commission strike Community Action of Suburban Hennepin County (CASH) from complaint since no funds from CASH have been applied to the accounts in dispute?
8. Not finding any statutory language which speaks to the question of MPUC authority to enforce a city ordinance, the Commission can:
  - a. Choose to enforce a city ordinance that is consistent with its Minn. Stat. § 216A authority, if such enforcement also serves the public interest; or
  - b. Decline to enforce a city ordinance
9. Does the Commission have jurisdictional authority governing violations of Minn. Stat. § 325F.69 Unlawful Practices?
10. Does the Commission have jurisdictional authority governing violations of Minn. Stat. § 336.2-302 Unconscionable Contract or Clause?
11. Are the complainants entitled to any refunds or relief pursuant to Minn. Rules, Pt. 7820.3800 Billing Errors.
12. Are NSP's actions in violation of Minn. Rules, Pts. 7820.1000 Disconnection of Service With Notice, Permissible Reasons; 7820.1300D Nonpermissible Reasons to Disconnect Service and/or 7820.1400B Landlord-Tenant Rule?